

Message Text

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ACTION INT-05

INFO OCT-01 EUR-12 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01

CIAE-00 COME-00 DODE-00 EB-08 FPC-01 H-01 INR-07

L-03 NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 OES-07

SP-02 SS-15 STR-05 TRSE-00 ACDA-12 JUSE-00 CEQ-01

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FM AMCONSUL VANCOUVER

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E.O. 11652: N/A

TAGS: PINT, ENRG, CA

SUBJEC: YUKON INDIAN CLAIMS

1. SUMMARY. DURING VISIT TO YUKON TERRITORY, AMBASSADOR BRIEFED BY GOC INDIAN CLAIMS NEGOTIATOR NAYSMITH ON SUBSTANTIAL PROGRESS BEING MADE TOWORD SETTLEMENT. CLAIMS SETTLEMENT AND BEGINNING OF WORK ON ALASKA GAS PIPELINE SEEM TO HAVE BEEN UNCOUPLED AS A RESULT, SINCE THERE NOW IS REASONABLE PROSPECT THAT AGREEMENT IN PRINCIPLE AND IMPLEMENTATION OF IMPORTANT PROGRAMS, ESPECIALLY LAND USE AND COMMUNITY DEVELOPMENT, CAN BE ACCOMPLISHED BEFORE CONSTRUCTION BEGINS. ELECTION OF NEW INDIAN LEADERSHIP THIS MONTH, INCLUDING A FULL-TIME NATIVE NEGOTIATOR, ARE HOPED TO RESULT IN MANDATE THAT WILL PERMIT COMPLETION OF NEGOTIATIONS. NAYSMITH HOPES TO REACH AGREEMENT IN PRINCIPLE ON SETTLEMENT PACKAGE IN ABOUT THREE MONTHS, WHICH WOULD CLEAR WAY FOR IMMEDIATE START ON SETTLEMENT PROCESS -- EVEN BEFORE LEGAL BASIS FOR SETTLEMENT (A SETTLEMENT ACT) WAS FULLY IN PLACE. DESPITE ENCOURAGING PROGRESS, EXPERIENCED OBSERVERS IN LIMITED OFFICIAL USE

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YUKON CAUTION THAT INDIANS HAVE IN PAST RETREATED FROM AGREEMENT RELATED TO THEIR CLAIMS JUST AS THEY APPEARED TO BE IN SIGHT. END SUMMARY.

2. DURING VISIT WHITEHORSE, OCTOBER 26-28, AMBASSADOR BRIEFED ON INDIAN CLAIMS PROCESS BY FEDERAL GOVERNMENT'S SPECIAL CLAIMS REPRESENTATIVE (YUKON), DR. J. K. NAYSMITH.

ECONOMIC COUNSELOR PLACKE AND I ACCOMPANIED.

3. INDIAN CLAIMS NEGOTIATIONS IN THE YUKON FIRST INITIATED IN 1973 WHEN COUNCIL OF YUKON INDIANS, UMBRELLA ORGANIZATION FROM INDIAN GROUPS, WAS FORMED FOR THAT PURPOSE. PRIOR TO LAST JANUARY, NEGOTIATION MET WITH ONLY LIMITED SUCCESS. LAST JANUARY NEW SENIOR REPRESENTATIVES WERE NAMED FOR EACH OF THE THREE PRINCIPALS IN CLAIMS NEGOTIATIONS WHO TOGETHER MAKE UP PLANNING COUNCIL: THE COUNCIL FOR YUKON INDIANS (CYI), YUKON TERRITORIAL GOVERNMENT (YTG) AND THE GOVERNMENT OF CANADA (GOC). IN CURRENT ROUND, PLANNING COUNCIL HAS ADOPTED NEW APPROACH. ADVERSARIAL STANCE AND SECRECY WHICH HAD CHARACTERIZED PREVIOUS NEGOTIATIONS WERE PUT ASIDE. FURTHER, ALL THREE PARTIES AGREED THEY WOULD DEAL WITH DIVERSE ELEMENTS OF CLAIMS SEQUENTIALLY, INSTEAD OF SIMULTANEOUSLY, AND AS AN EVOLVING PROCESS. INTEGRAL PART OF PLANNING PROCESS IS FORMATION OF WORKING GROUPS WHICH ADDRESS SPECIFIC ELEMENTS OF CLAIMS. WORKING GROUPS COLLECT DATA, DEVELOP BACKGROUND DOCUMENTS AND CONDUCT RESEARCH AND COME UP WITH SUGGESTIONS AND RECOMMENDATIONS. FOR EXAMPLE, THERE ARE INTER ALIA WORKING GROUPS ON LAND SELECTION, CORPORATE STRUCTURE, ELIGIBILITY AND MONETARY COMPENSATION.

4. NAYSMITH NOTED THAT A MAJOR ADVANTAGE IN NEGOTIATION LIMITED OFFICIAL USE

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OF CLAIMS IS THAT VIRTUALLY ALL TERRITORIAL LAND IN CONTROL OF GOC. ONLY 6400 SQUARE MILES UNDER YTG CONTROL. BECAUSE OF PREDOMINANT POSITION OF FEDERAL GOVERNMENT, CYI WOULD PREFER NEGOTIATE ONLY WITH FEDERAL GOVERNMENT BUT, NAYSMITH SAID, AS A PRACTICAL MATTER IT IS ESSENTIAL YTG BE INVOLVED AS EQUAL PARTNER. IT IS PRESENCE OF YTG REPRESENTATIVE DURING DELIBERATIONS, TOGETHER WITH HOLDING OF PUBLIC MEETINGS AND PUBLICATION OF AGREEMENTS REACHED BY THE PLANNING COUNCIL, THAT HAS QUIETED FEARS OF WHITE YUKONERS AND GIVEN THEM CONFIDENCE THEIR RIGHTS ALSO BEING LOOKED AFTER. IN PLANNING COUNCIL DISCUSSIONS LAND FREQUENTLY REFERRED TO AS CONERSTONE OF ANY SETTLEMENT.

5. ELIGIBILITY CRITERIA AGREED UPON BY PLANNING COUNCIL WOULD DO AWAY WITH THE HISTORIC DIFFERENTIATION BETWEEN STATUS AND NON-STATUS INDIANS. UNDER THESE CRITERIA, VIRTUALLY ALL INDIANS WHO CAN ESTABLISH THEY ARE 25 PERCENT OR MORE OF YUKON INDIAN ANCESTRY WILL BE ELIGIBLE FOR PARTICIPATION IN CLAIMS SETTLEMENT. THIS IS LIKELY TO HAVE MAJOR CULTURAL AND LEGAL IMPACT NOT ONLY IN YUKON BUT IN ALL CANADA AS WELL. YUKON INDIANS, IN MANNER THAT IS COMMON THROUGHOUT CANADA, ORGANIZED AS

STATUS AND NON-STATUS INDIANS. STATUS INDIANS FORM THE MEMBERSHIP OF YUKON NATIVE BROTHERHOOD; NON-STATUS ARE MEMBERS OF YUKON ASSOCIATION OF NON-STATUS INDIANS. INDIAN ACT DIFFERENTIATES AND DISCRIMINATES BETWEEN STATUS AND NON-STATUS INDIANS.

6. A PRIMARY OBJECTIVE OF GOC IS TO REACH A "FINAL SETTLEMENT" DEFINING ABORIGINAL RIGHTS. THIS INTENT OF GOC UNDERSTANDABLY MAKES INDIAN NEGOTIATORS ACUTELY AWARE THEIR HEAVY RESPONSIBILITY AND THUS UNEASY. NAYSMITH NOTED IN PASSING THAT DESIRE BY FEDERAL DEPARTMENT OF JUSTICE TO INCLUDE SPECIFIC LANGUAGE ON "EXTINGUISHMENT" OF INDIAN RIGHTS WAS SOMEWHAT TROUBLESOME. NONETHELESS, NAYSMITH SPOKE ENTHUSIASTICALLY ABOUT THE PROSPECTS FOR AN

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L-03 NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 OES-07
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AMICABLE SETTLEMENT. PROGRESS TO DATE HAS BEEN GOOD. FOUR DOCUMENTS ESTABLISHING AREAS OF AGREEMENT HAVE BEEN PUBLISHED: (1) "CO-OPERATIVE PLANNING TOWARD A SETTLEMENT"; (2) "A STATEMENT OF GOALS"; (3) "ELIGIBILITY"; AND (4) "SETTLEMENT MODEL".

7. CYI UNDERGOING REORGANIZATION WHICH SHOULD STRENGTHEN IT AS BARGAINING AGENT FOR THE 12 YUKON INDIAN COMMUNITIES. ELECTIONS TO TAKE PLACE NOVEMBER 2 FOR NEW CYI LEADERSHIP. DANIEL JOHNSON, WHO HAD BEEN CYI CHAIRMAN, NOT A CANDIDATE (ALTHOUGH NAYSMITH DID NOT COMMENT, OTHERS SAID THAT JOHNSON HAS LOST CONFIDENCE OF CYI MEMBERSHIP). THERE ARE TWO CANDIDATES FOR CHAIRMAN, HARRY ALLEN AND STANLEY JONES, AND IT APPEARS ALLEN WILL WIN. NO LONGER IS THE CHAIRMAN

TO BE CHIEF NEGOTIATOR FOR CYI. INSTEAD A NEGOTIATING COMMITTEE IS BEING APPOINTED AND IT IS TO BE HEADED BY A PROFESSIONAL. NAYSMITH OPINED THAT INDIAN LAWYER DAVID JOE LIKELY TO BE CHOSEN FOR THIS JOB. NAYSMITH EXPECTS ALL PARTIES WILL REACH CONSENSUS ON AN "AGREEMENT IN PRINCIPLE" IN ABOUT THREE MONTHS. IT IS HIS JUDGMENT THAT A FINAL AGREEMENT WILL BE CONCLUDED ABOUT A YEAR LATER. LIMITED OFFICIAL USE

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THIS FINAL AGREEMENT WOULD FORM THE BASIS FOR A "SETTLEMENT ACT."

8. NAYSMITH STRESSED THAT IMPLEMENTATION OF SETTLEMENT NEED NOT AWAIT EITHER PASSAGE OF SETTLEMENT ACT OR SIGNING OF FINAL AGREEMENT. SOME CLAIMS COULD BE IMPLEMENTED, OR AT LEAST A START MADE, FOLLOWING SIGNING OF AGREEMENT IN PRINCIPLE. INDIAN CORPORATE STRUCTURES COULD BE FUNDED AND ESTABLISHED. AS AGREEMENT REACHED ON CERTAIN PROGRAMS, I.E. THOSE DEALING WITH EDUCATION AND TRAINING AND COMMUNITY DEVELOPMENT, PROGRAMS COULD BE TAKEN OVER BY INDIAN CORPORATIONS FOR IMPLEMENTATION. ALL CORPORATIONS WOULD BE 100 PERCENT CONTROLLED BY YUKON INDIANS. NAYSMITH ALSO ENVISAGES THAT AT AN EARLY DATE A LAND COMMISSION COULD BE ESTABLISHED FOR SELECTING LAND AND CARRYING OUT A LAND USE PLANNING PROGRAM. ALTHOUGH INDIAN LEADERS IN BEGINNING TOOK GENERAL POSITION "LAND CLAIMS BEFORE A PIPELINE", THEIR INSISTENCE THIS REGARD NOW MUTED SINCE THEY SEE POSSIBILITY REACHING AGREEMENT ON MAJOR CLAIMS PRIOR TO WORK ACTUALLY COMMENCING ON PIPELINE.

9. NAYSMITH ACKNOWLEDGED SOME THINGS COULD GO WRONG IN THE NEGOTIATIONS BUT DOUBTED THEY WOULD. FOR EXAMPLE, INDIANS' LAND DEMAND COULD, SAY, BE FOR A 150,000 SQUARE MILES WITH THE GOVERNMENT'S BEING ONLY, SAY, 10,000. NAYSMITH FELT SUCH DIVERSION OF VIEW UNLIKELY SINCE THERE MUST BE A RATIONALE ON BOTH SIDES TO SUPPORT CLAIMS AND, FURTHERMORE, ALL THREE PARTIES VERY MUCH DESIROUS OF RESOLUTION OF CLAIMS AND TRYING HARD TO BE REASONABLE. CONCEIVABLE, TOO, HE SAID, THAT CYI AND GOC MIGHT BE IN AGREEMENT ON SOME MAJOR CLAIM AND YTG NOT. THIS, TOO, HE DEEMED UNLIKELY SINCE ALL THREE PARTIES ARE MOVING FORWARD IN CLOSE COOPERATION.

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10. COMMENT: DURING WHITEHORSE VISIT DISCUSSIONS WITH OTHER GOVERNMENT AND BUSINESS LEADERS TOUCHED ON INDIAN

CLAIMS. SOME FELT NAYSMITH, WHO PUBLICLY EXPRESSED HIS OPTIMISM WHEN APPEARING BEFORE ALASKA HIGHWAY PIPELINE INQUIRY, MAY BE MISLED BY HIS OWN ENTHUSIASM AND HOPE. IT WAS NOTED INDIANS HAVE IN THE PAST GOTTEN COLD FEET AND RETREATED FROM PREVIOUSLY AGREED POSITIONS. HOWEVER, ALL ACKNOWLEDGED CYI HAS GAINED IN MATURITY AND CONFIDENCE AND THAT CLAIMS PROCESS HAS MOVED FURTHER AND FASTER THAN HAD BEEN ANTICIPATED. YUKON COMMISSIONER PEARSON STATED THAT WHEREAS EVEN A MONTH AGO HE WAS OF BELIEF A SETTLEMENT WOULD PROBABLY HAVE TO BE IMPOSED, HE NOW HOPEFUL AND REASONABLY CONFIDENT THAT AN AMICABLE SETTLEMENT WILL BE FORTHCOMING WITHIN THE NEXT YEAR OR SO.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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From: VANCOUVER
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Image Path:
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Original Handling Restrictions: n/a
Original Previous Classification: n/a
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Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
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Retention: 0
Review Action: RELEASED, APPROVED
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Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 634055
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Status: NATIVE
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Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/45620c1d-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009